IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14440 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARENDRASINH RANJITSINH RAYJADA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14440 of 2004

MR SM CHUDASAMA FOR MS SUBHADRA G PATEL for Petitioner

MR IM PANDYA, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Rajkot City, on 6th October, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 7th October, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration two criminal offences registered against the petitioner under the Bombay Prohibition Act. First case came to be registered before Bhagtinagar Police Station, Rajkot City on 20th January, 2004 wherein, it was alleged that the petitioner was found in possession of 96 bottles of prohibited foreign liquor. Second case registered before Chotila Police Station on 17th August, 2004 wherein it was alleged that the petitioner was found in possession of 732 bottles of prohibited foreign liquor and 32 bottles of prohibited beer. The detaining authority thoroughly examined the investigation papers in these two cases and concluded that the petitioner was dealing in storing, selling and transporting prohibited liquor. The detaining authority also concluded that the petitioner was a bootlegger within the meaning of PASA Act.

3. Secondly, the detaining authority relied upon two incamera statements as recorded by the sponsoring authority on 3rd October, 2004 and verified by the detaining authority on 5th October, 2004. The identities of the witnesses are not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act. Out of two witnesses, the first witness referred to an incident occurred on 5th August, 2004. At about 9.00 A.M., the witness was present at his place of business and was approached by the petitioner and his accomplices in one Sentro car. The petitioner stated to the witness that he wanted to Rs.10,000-00 from the witness for arrangement of prohibited liquor, which was to be delivered to him from Rajasthan. The petitioner stated that after selling such liquor, the amount of Rs.10,000-00 would be returned to the witness. The witness knew the activities of the petitioner, so he refused to give any amount to the petitioner and on his refusal, the petitioner and his accomplices got excited and started damaging the goods at the business place of the witness. The witness stated that if, such bullying tactics were employed by the petitioner, he would be constrained to file a complaint before the police. On saying so by the witness, the petitioner and his accomplices started beating the witness and the petitioner took out a knife and threatened the witness that if any complaint is filed against him, the witness would be done to death. On raising shouts of help by the witness, a crowd was gathered, but none dared to rescue the witness. On the contrary, the petitioner and two

accomplices rushed towards the crowd with open knives resulting in chaos in the locality. The atmosphere of fear and terror was spread.

4. The second witness referred to an incident occurred on 12th June, 2004. At about 9.00 P.M., the witness was at his place of business, the petitioner and his accomplices came near the business place of the witness in one Qualis car, which was loaded with the prohibited foreign liquor. The said car was parked behind the business place of the witness and petitioner and his accomplices started delivering and selling prohibited liquor to the customers. The witness requested the petitioner and his accomplices not to sell illegal liquor near his business place. The witness was threatened by the petitioner, but the witness stated that if he was harassed by the petitioner, he would be constrained to file a complaint against the petitioner before the police. On saying so by the witness, the petitioner and his accomplices got excited and started beating the witness, the petitioner took out knife and threatened the witness and stated that if the witness dared to file a complaint before the police against him then the witness would be done to death. The crowd was gathered to create terror and fear, the petitioner and his accomplices threatened the crowd with open knives so the people started running helter-skelter, the atmosphere of terror and fear was created. On act of supplication by the petitioner, the witness could save his skin.

5. Relying upon the above materials, the detaining authority came to the conclusion that the petitioner was in habit of harassing innocent citizens who became obstacle in executing the illegal activities of the petitioner. In view of the detaining authority, the bootlegging activities of the petitioner were prejudicial to the maintenance of the public order and adversely affecting the public health. The detaining authority concluded that the bootlegging activities of the petitioner were required to be prevented forthwith. After considering the other remedies available against the petitioner in general law, the detaining authority reached to the subjective satisfaction that there was no other alternative except, to detain the petitioner under the PASA Act as bootlegger. The detaining authority, therefore, passed an order of detention of the petitioner which is under challenged in this petition.

6. Learned advocate Mr.S.M.Chudasama for learned advocate Ms.S.G.Patel for the petitioner and learned AGP Mr.I.M.Pandya for the respondents were heard at length.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

8. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling with the category of breach of public order.

9. Referring to the two criminal cases filed against the petitioner under the Bombay Prohibition Act for the possession of prohibited liquor, and going through the investigation papers as placed on record, it is found that those two cases came to be filed against the detenu because he was dealing in prohibited liquor. The possession of prohibited liquor is a breach under the Bombay Prohibition Act and hence, cases came to be filed. However, merely filing cases under the Bombay Prohibition Act would not result in a conclusion that the activities of the petitioner were disturbing the public order or was affecting adversely to the public health. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence in dealing in prohibited liquor cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order or affecting the public health.

10. Further while referring to the incamera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through incamera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through incamera statements, even from the bare reading of them, are not capable to be branded as to the activities disturbing the even tempo of the society. No widespread from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order or affecting adversely to the public health.

11. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. as reported in 2000 (1) GLH 293, wherein the Division Bench of this Court after considering the decision of the Apex Court, observed in paragraph Nos.20 and 21 as under :

> "20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.
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> "21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the

statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and, therefore, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by the Police Commissioner, Rajkot City on 6th October, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu NARENDRASINH RANJITSINH RAYJADA is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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